

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** May 10, 2013

Approved



Date

5/21/13

**COUNCIL DISTRICT: 4**

**SUBJECT: APPEAL OF THE PLANNING DIRECTOR'S ENVIRONMENTAL DETERMINATION OF CATEGORICAL EXEMPTION FOR A SPECIAL USE PERMIT (FILE NO. SP12-033) TO ALLOW A RECYCLING TRANSFER FACILITY ON A 3.83 GROSS ACRE SITE IN THE HI-HEAVY INDUSTRIAL ZONING DISTRICT, LOCATED AT THE NORTHERLY TERMINUS OF YARD COURT (1255 YARD CT)**

## RECOMMENDATION

Conduct an Administrative Hearing and deny an Appeal of the Planning Director's environmental determination of Categorical Exemption for a Special Use Permit to allow a recycling transfer facility use within an existing building on a 3.83 gross acre site in the HI – Heavy Industrial Zoning District. In addition, consider adoption of a resolution to uphold the Planning Director's adoption of the Exemption and certify that:

- (1) The City Council has read and considered the Exemption;
- (2) The Exemption has been completed in compliance with the California Environmental Quality Act (CEQA);
- (3) On the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment;
- (4) The Exemption reflects the independent judgment and analysis of the City of San José; and
- (5) The Director of Planning, Building and Code Enforcement shall transmit copies of the Exemption to any other decision-making body of the City of San José for the project.

## OUTCOME

Denial of the appeals would result in the adoption of the Exemption to allow the City Council to allow the Special Use Permit to go forward as approved by the Planning Director.

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Upholding the appeals would overturn the Planning Director's Environmental Review Determination. The City would have to rescind the approved Special Use Permit and proceed with preparing a new environmental document prior to re-hearing the Special Use Permit.

### **EXECUTIVE SUMMARY**

This report addresses the issues raised in appeals of an environmental determination of "Exempt" as prepared for the approved Special Use Permit for EcoBox Recycling Transfer Facility at 1255 Yard Court (File No. SP12-033).

This memorandum documents that the Exemption from Environmental Review should be adopted by the City Council as being in compliance with the California Environmental Quality Act (CEQA) and that on the basis of the whole of the administrative record that there is no substantial evidence that the project will have a significant effect on the environment.

### **BACKGROUND**

On October 12, 2012, Dennis Lowery, on behalf of EcoBox, applied for a Special Use Permit to allow a recycling transfer facility use in an existing 9,581 square foot structure and on an existing 26,200 square foot yard on a 3.83 gross acre site in the HI – Heavy Industrial Zoning District located at 1255 Yard Court. The project file number for this proposal is SP12-033.

Staff determined that the project qualified under CEQA Section 15301, Existing Facilities, and was, therefore, exempt from Environmental Review. This Exemption is for projects that consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. (The permit applicant initially applied for Exemption from Environmental Review based on CEQA Section 15332, In-Fill Development.)

On February 27, 2013, the Planning Director conducted a public hearing on the Exemption from Environmental Review and the related Special Use Permit in accordance with the Municipal Code. On February 27, 2013, the Planning Director made a final determination (Attachment 1) regarding the adoption of the Exemption and recommended approval of the Special Use Permit. The Special Use Permit (Attachment 2) was approved and issued on March 4, 2013.

On March 1, and March 4, 2013, Hai Truong and Emily Hanson filed separate timely appeals of the Planning Director's environmental determination (see Attachment 3). When an Exemption from Environmental Review is adopted by a non-elected decision-making body of the local lead agency, that environmental determination may be appealed to the local lead agency's elected decision-making body, which process has been codified in Title 21 of the San José Municipal Code.

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Surrounding uses to the site are Heavy Industrial to the north, south and west and Coyote Creek abuts the property to the east. The subject site was formerly occupied by the Silicon Valley Paving Company with the proposed recycling and transfer facility retaining the existing building and yard, and providing necessary site improvements.

If the City Council finds the appeal of the environmental determination valid, the City shall require the preparation of a new environmental document prior to any consideration of whether the project should be approved.

### **ANALYSIS**

The proposed project has been analyzed in terms of the following: 1) specific comments raised by the appellants of the environmental determination; 2) conformance with the Envision San José 2040 General Plan; and 3) conformance with the Heavy Industrial Zoning and other applicable provisions of the City of San José Zoning Ordinance.

#### ***Appeals of Environmental Determination***

Timely appeals of the Planning Director's adoption of the Mitigated Negative Declaration (MND) were filed by Hai Truong and Emily Hanson (Attachment 3). Hai Truong represents AllFAB Precision Sheetmetal and is a neighbor of the proposed project. Emily Hanson represents Greenwaste Recovery, a different recycling company.

Hai Truong argues that the Exemption is inadequate based on the following points, with responses following each point demonstrating that the Exemption satisfies the requirements of CEQA:

- 1. The project represents a health and safety risk to him and his employees because operations on the site will create dust and debris and that dust could contain lead and asbestos.*

The subject recycling transfer facility is conditioned to have all sorting, handling, batching, and bailing activities take place in the existing industrial building thus not requiring the need for air quality mitigation. Additionally, the permittee was conditioned against the collection or processing of any hazardous materials.

- 2. This site poses a risk to the nearby creek that runs alongside the site because the creek swells up on occasion with approximately one (1) inch of water covering the parts of the site. If the recyclable materials to be processed sit on bare ground close to the creek, the creek could become contaminated.*

The recycling transfer facility use is moving into an existing building that does not conform to current policy with respect to its proximity to the creek. The materials being stored on-site shall be stored inside containers that sit approximately six (6) inches off of the ground and

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shall be covered in case of rain or creek swelling in order to help prevent stormwater runoff issues.

Emily Hanson argues that the Exemption is inadequate based on the following points, with responses following each point demonstrating that the Exemption satisfies the requirements of CEQA:

1. *The project description does not include the amount of waste tonnage allowed to be processed daily at the site permitting an unlimited amount of waste to be processed on the site.*

The constraints placed on the proposed recycling transfer facility due to the small size of the site would sufficiently cap the amount of waste processed. The size of the site limits both the storage capacity of the permittee as well as the amount of parking available on-site. The hours of operation are also limited in the Special Use Permit.

Parking is required to be provided for all company and employee vehicles. With eleven (11) approved parking spaces, the facility is limited in the number of employees and trucks. The applicant has five (5) employees and six (6) trucks, which meets the maximum allowed by the Zoning Code. With six trucks, it is anticipated that there will be no more than 50 one-way trips in and out of the site daily.

Furthermore, the permittee has had to apply for an additional permit through the State of California Department of Resources Recycling and Recovery. This permit is a "Notification Only" permit that limits the permittee to processing no more than twenty-five (25) tons per day.

2. *There are missing findings needed for the use of CEQA Guideline 15332, In-Fill Development Projects, in order to find the project Exempt. These missing findings specifically relate to finding 15332(d): "that approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality."*

Staff did not use CEQA Guideline 15332, In-Fill Development, for its Categorical Exemption finding. While the applicant initially filed an Exemption from Environmental Review application using 15332 as his anticipated Categorical Exemption type, Staff used CEQA Guidelines Section 15301, Existing Facilities, for the Exemption from Environmental Review. Staff found that this Categorical Exemption better addressed the scope of the project than 15332. CEQA Guidelines Section 15301 is a Categorical Exemption for projects that consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The recycling transfer facility will have all sorting, handling, batching, and bailing activities take place in an existing industrial building. It is a heavy industrial use consistent with the zoning and the activity level of previous uses on the site.

3. *The city has processed an ineligible Exemption for the subject recycling transfer facility when it has required initial studies for competing recycling businesses. This constitutes a denial of equal protection of law in violation of the 14<sup>th</sup> Amendment of the U.S. Constitution.*

Under CEQA, the City reviews each project uniquely based on the scope, use and surroundings of the project. Based on thorough review of the subject proposal's own unique plans and project details, the City found this project exempt under Categorical Exemption 15301, Existing Facilities. The City made this determination following the correct CEQA processes and this does not constitute a denial of equal protection of the law.

### ***General Plan Conformance***

The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Heavy Industrial. Recycling Transfer Facility uses are allowed in this designation. In addition, the proposed recycling transfer facility is consistent with and facilitates implementation of the General Plan's Land Use Goal (LU-7): "Attract new industrial uses to expand the City's economy and achievement of fiscal sustainability, stimulate employment, and further environmental goals." One of this goal's policies (LU-7.3) states: "Encourage the use of industrially-planned land to provide locations for various forms of recycling services (e.g., collection, handling, transfer, processing, etc.), for the support facilities required by these services (e.g., service yards, truck storage and service) and for companies that manufacture new products out of recycled materials in order to support the City's Solid Waste Program."

### ***Zoning Conformance***

The subject site is in the HI – Heavy Industrial Zoning District. This Zoning District allows recycling transfer facility uses with the approval of a Special Use Permit. The Heavy Industrial Zoning District establishes a front setback of 15 feet and front setbacks for passenger vehicle parking and truck parking of 15 feet. Since the site is not adjacent to any residential district, the front setback for loading is 15 feet and there is no side or rear setback. The Zoning Code establishes the parking requirements for recycling transfer facilities as one space for each employee at peak time and one space for each company vehicle.

The subject project (SP12-033) met all requirements in the Zoning Code and was approved by the Director of Planning through a Special Use Permit.

### **EVALUATION AND FOLLOW-UP**

If the Council adopts the Exemption from Environmental Review then EcoBox will continue the Recycling Transfer Facility use as permitted in the approved Special Use Permit (SP12-033).

### **POLICY ALTERNATIVES**

As discussed in the Analysis section, the Council has one distinct decision to make:

1. Mitigated Negative Declaration: The Council can either:
  - a. Adopt the Exemption, or
  - b. Uphold the appeal and require that a new environmental document be prepared prior to re-hearing the Special Use Permit.

For the reasons stated in the Analysis section, staff recommends that the City Council adopt the Exemption.

### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy for the Special Use Permit application. In addition, the property owners and occupants within a 500-foot radius of the project site were sent public hearing notices for the City Council appeal hearing and for the previous Planning Director's hearing.

### **COORDINATION**

The preparation of this memorandum was coordinated with the City Attorney's Office.

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**FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan goals and policies as discussed in the Analysis section.

**CEQA**

Exempt, File No. SP12-033.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact John Davidson, Senior Planner, at (408) 535-7895

Attachments:

1. Final Director's Determination, February 27, 2013
2. Special Use Permit approved by the Director of Planning on March 4, 2013
3. Environmental Appeals from Hai Truong and Emily Hanson

**STATEMENT OF EXEMPTION**

**FILE NO.** SP12-033

**LOCATION OF PROPERTY** Northerly terminus of Yard Court (1255 Yard Court)

**PROJECT DESCRIPTION** Special Use Permit to allow a recycling transfer facility in the HI Heavy Industrial Zoning on a 3.83 gross acre site. There will be no new construction. The recycling transfer facility will use an existing 9,581 square foot industrial building and an existing 16,619 square foot yard for parking and storage.

**ASSESSOR'S PARCEL NUMBER** 254-17-073

**CERTIFICATION**

Under the provisions of Section 15301(e)(1) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

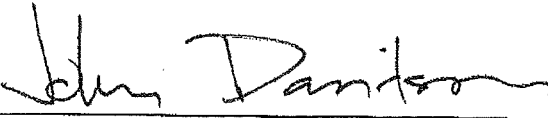
**15301. Existing Facilities**

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

**Analysis**

The proposed use is a recycling transfer facility with all sorting, handling, batching, and bailing activities taking place in an existing industrial building. It is a heavy industrial use consistent with the zoning and previous uses on the site.

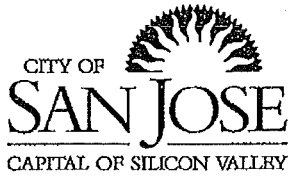
Joseph Horwedel, Director  
Planning, Building and Code Enforcement

  
Deputy

Date: February 27, 2013

Project Manager: Matthew VanOosten, PBCE





*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, DIRECTOR

March 4, 2013

Eco Box  
Dennis Lowery  
1255 Yard Court  
San Jose CA 95133

Dear Dennis Lowery:

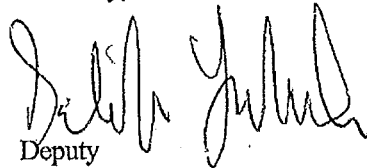
RE: **Special Use Permit, File No. SP12-033**, located on the **Northerly Terminus of Yard Court (1255 Yard Court)**.

The enclosed is your copy of the Planning Director's action on this Special Use Permit.

*This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!*

The Planning Director's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the Planning Commission by filing a Notice of Appeal and a \$2,232.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m., March 14, 2013**. If you have any questions, please feel free to contact your Project Manager, Matthew Van Oosten at (408) 535-6870 or by e-mail at [matthew.vanoosten@sanjoseca.gov](mailto:matthew.vanoosten@sanjoseca.gov).

Sincerely,



Deputy

cc: TSMMLLC, PO Box 25558, San Jose, CA 95159

Enclosures

MV:clc

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP12-033</b>
<b>LOCATION OF PROPERTY</b>	<b>Northerly Terminus of Yard Court (1255 Yard Court)</b>
<b>ZONING DISTRICT</b>	<b>HI – Heavy Industrial District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Heavy Industrial</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow a recycling transfer facility use in an existing building and yard on a 3.83 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>OWNER</b>	<b>TSMMLLC PO Box 25558 San Jose, CA 95159</b>

### **FACTS**

1. The subject Special Use Permit application proposes to use an existing 9,581 square foot structure and an existing 26,200 square foot yard for a recycling transfer facility use on a 3.83 gross acre site.
2. The recycling transfer facility use will involve the sorting, handling, batching, bailing of recyclable materials delivered to the site via truck.
3. The site has a designation of HI Heavy Industrial in the Envision San José 2040 General Plan.
4. The subject site is located in an HI Heavy Industrial Zoning District
5. Recycling transfer facilities require a Special Use Permit in the HI Heavy Industrial Zoning District.
6. The recycling transfer facility use requires 1 parking space per employee of the largest shift plus 1 parking space per facility vehicle.
7. The company will have 6 employees at the largest shift and 5 facility vehicles, thus requiring 11 parking spaces.
8. The proposed project provides 11 parking spaces.
9. All sorting operations will be confined within enclosed buildings. Outdoor storage areas are designated on the plans.
10. Materials being stored outside remain in containers and the containers sit off of the ground.
11. Under the provisions of the Existing Facilities Section 15301 of the California Environmental Quality Act, this project is exempt from the environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended.

## FINDINGS

The Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposed project is consistent with the San José 2040 General Plan.
2. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
3. The proposed project is in conformance with the California Environmental Quality Act

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning finds and concludes pursuant to Section 20.100.820 of the San José Municipal Code:

1. The proposed use as conditioned at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;
  - b. Impair the utility or value of property of other persons located in the vicinity of the site;
  - c. Be detrimental to public health, safety, or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features prescribed in this Title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - b. By other public or private service facilities as are required.

## APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Special Use Permit shall automatically expire two years from and after the date of approval by the Director of Planning, or by the Planning Commission on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Special Use Permit. The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance with Plans.** Except as noted under condition no. 6 below, construction and development shall conform to the approved plans entitled, "SP12-033 / Occupancy Change," on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Operations.**
  - a. All sorting, handling, batching, and/or sorting activities associated with the recycling processes of recyclable materials shall be conducted within the existing facility building and prohibited in the facility yard or outdoor areas.
  - b. Bins which contain earth, rock, concrete, and/or asphalts shall be stored within their bin, box or transportation container and stored or cycled within the facility yard.
  - c. Operators' trucks, bins, boxes, and containers used for material collection, staging, and/or sorting shall be allowed to be staged, stored and cycled in the facility yard (outside the facility building) but processing of recyclable materials shall be conducted within the facility building only.
9. **Materials.**
  - a. The materials processed at the facility will be limited to "Construction and Demolition Wastes" to include waste building materials, packaging and rubble resulting from construction, remodeling, repair, demolition operations on pavements, houses, commercial buildings and other structures or any other sources which provide recyclable material (As defined in Title 14, California Code of Regulations (CCR)).
  - b. The collection, transfer, storage or processing of Garbage, Hazardous Wastes, Industrial Wastes, and Putrescible Wastes is prohibited (as defined in Title 14, California Code of Regulations (CCR) as amended).

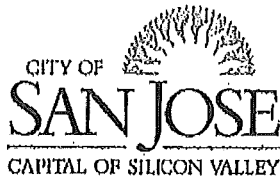
10. **Hazardous Materials Storage.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored and in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
11. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.
12. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - b. *Construction Plans.* This permit file number, SP12-033, shall be printed on all construction plans submitted to the Building Division.
  - c. *Building Permit Required.* A Building Permit is required to allow the change in occupancy to ensure compliance with ADA requirements.
  - d. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets.
13. **Fire Code Compliance.** Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be required to the satisfaction of the Fire Chief during the Building Permit process.
14. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
15. **Mechanical Equipment.** All roof equipment shall be screened from view.
16. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
17. **Landscaping.** Planting is to be provided as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
18. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

19. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
20. **Fences.** The developer of this project shall be responsible to the repair and replacement of all perimeter fences as needed.
21. **Lighting.** All new outdoor lighting on the site shall conform to the Zoning Code and the City's Outdoor Lighting Policy and shall use low-pressure sodium (LPS) lighting fixtures.
22. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
23. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
24. **Hours of Operation.** The use shall not operate between the hours of 7:00 p.m. and 7:00 a.m.
25. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
26. **Outside Storage.** Outside storage bins shall be covered in conformance with the City of San José City Council Policy 6-29.
27. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

**APPROVED** and issued this 4<sup>th</sup> day of March, 2013.

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

  
Deputy



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MAR 01 2013

CITY OF SAN JOSE  
DEVELOPMENT SERVICES

CITY OF SAN JOSE

Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113-1905  
tel (408) 535-3555 fax (408) 292-6055  
Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER <b>SP12-033</b>		RECEIPT # <b>7102636</b>	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) <b>Exemption</b>		AMOUNT <b>\$100</b>	
		DATE <b>3/1/13</b>	
		BY <b>MD</b>	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: <b>Exemption</b>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <b>SEE ATTACH LETTER</b>			
PERSON FILING APPEAL			
NAME <b>HAI TRUONG</b>		DAYTIME TELEPHONE <b>(408) 279-1099</b>	
ADDRESS <b>1015 TIMOTHY DRIVE</b>		CITY <b>SAN JOSE</b>	STATE <b>CA</b>
		ZIP CODE <b>95133</b>	
SIGNATURE 		DATE <b>3/1/13</b>	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME <b>SAME AS ABOVE</b>			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ( )		FAX NUMBER ( )	E-MAIL ADDRESS <b>htruong@allfabprecision.com</b>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.



All FAB Precision Sheetmetal, Inc.  
1015 Timothy Drive  
San Jose, CA 95133

tel: 408.279.1099  
fax: 408.297.3803  
web: [www.allfabprecision.com](http://www.allfabprecision.com)

To Whom It May Concern:

My company (All FAB Precision Sheetmetal, Inc.) is appealing the decision made by the Hearing Officer (Sal Yakubu) on February 27, 2013 for File Number: SP12-033 approving a Special Use Permit to allow a Recycling Transfer Facility at 1255 Yard Court, San Jose, CA 95133.

Reason for Appeal:

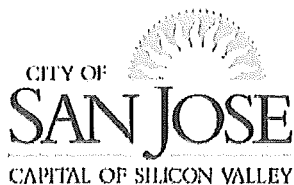
1. Health and Safety risk to me and my employees: According to the public records material that would be recycled are from constructions sites. The concern is that if operations from this site create dust and debris, then that dust could contain lead and asbestos that would carry over to our site.
2. Environmental Risk: There is a creek alongside this site. I can attested to the fact that curtain time during the year the creek swells up with water and over follows onto this (and the adjacent) site. Subjectively I would state that a 1" or more of water covering  $\frac{1}{4}$  to  $\frac{1}{2}$  of the site can be seen during the ralny season. My concern is that if there are recycled materials on bare ground closes to the creek that the creek may become contaminated.

Regards,

A handwritten signature in black ink, appearing to read 'Hai Truong', is written over a horizontal line.


Hai Truong  
General Manager





**CITY OF SAN JOSE**  
Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San José, CA 95113-1905  
tel (408) 535-3555 fax (408) 292-6055  
Website: [www.sanjoseca.gov/planning](http://www.sanjoseca.gov/planning)

## NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER <b>SP12-033</b>		RECEIPT # _____	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) <b>exempt</b>		AMOUNT <b>\$100</b>	
		DATE <b>3-4-13</b>	
		BY <b>Jan</b>	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: <b>SP 12-033 Eco-Box</b>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): <b>See attached letter presented prior to Director's Hearing.</b>			
PERSON FILING APPEAL			
NAME <b>Emily Hanson / Greenwaste Recovery</b>		DAYTIME TELEPHONE <b>(831) 262-0473</b>	
ADDRESS <b>1500 Berger Drive</b>		CITY <b>San Jose</b>	STATE <b>CA</b>
		ZIP CODE <b>95112</b>	
SIGNATURE 		DATE <b>3/4/13</b>	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ( )		FAX NUMBER ( )	E-MAIL ADDRESS

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

**BRUCE TICHININ, INC.**  
**Bruce Tichinin**  
**Attorney At Law**  
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Los Gatos, California 95032  
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February 26, 2013

**HAND-DELIVERED**

Joseph Horwedel, Director  
Planning, Building and Code Enforcement  
Attn. Hearing Officer: Salifu Yakubu  
City of San Jose  
200 East Santa Clara Street  
Tower, 3<sup>rd</sup> Floor  
San Jose, CA 95113

**RE: February 27, 2013**  
**Planning Director's Hearing Agenda**  
**Consent Calendar No.2.d. SP 12-033**

Dear Hearing Officer:

Kindly be advised that my office represents GreenWaste, Inc. with regard to:

1. The above application of Eco Box Recycling ("Eco Box") for a Special Use Permit ("Permit") to allow a Recycling Transfer Facility at 1255 Yard Court ("Site"), and
2. The failure of the City of San Jose ("City") to halt the illegal, ongoing, pre-Permit operations by Eco Box on the site, despite numerous complaints by my client to the Department of Code Enforcement City requesting that it do so.

It is respectfully demanded that:

1. The City suspend all processing of the Permit application until:
  - a. All operations on the Site have halted, and

- b. Compliance has been achieved with San Jose Municipal Code Section 20.10.030 (which prohibits use of the Site "*except in strict compliance with*" the requirements of Section 20.80.1100 for the Permit prior to "*operation of any recycling facility*" and expressly provides that the "*temporary or transitory nature of a use does not exempt it from this requirement*" ) through the City, as plaintiff, and Dennis Lowery and all other owners or representatives of Eco Box, as defendants, signing and filing in Santa Clara County Superior Court a Consent Judgment for a Permanent Injunction restraining and prohibiting the defendants from conducting any form of recycling operations on the Site until a Permit has been granted by the City, as provided for in Section 1.080.015. A.
2. Once the halt has occurred and the Permanent Injunction has issued, the City comply with the California Environmental Quality Act ("CEQA") by preparing an Initial Study for the project of the Permit, followed by, as required by the findings of the Initial Study regarding the significance or lack of significance of the environmental effects of the project, a Mitigated Negative Declaration or an Environmental Impact Report.

I.

**CEQA REQUIRES AN ADEQUATE PROJECT DESCRIPTION,  
INCLUDING THE AMOUNT OF WASTE TONNAGE ALLOWED TO  
BE PROCESSED DAILY AT THE SITE.**

The case of *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82 requires accurate and "finite" project descriptions. The project description for the Permit here, even though it is for a recycling facility, whose business is processing waste, does not even state a tonnage limit, but would allow an unlimited amount of waste to be processed on the site.

When 100 or more trucks per day could bring thousands of tons of putrescible waste to the site each day, how can it be claimed that the project "*will not result in any significant effects relating to traffic, noise, air quality or water quality?*"

## II.

**CEQA GUIDELINE 15332 DOES NOT CATEGORICALLY EXEMPT THIS PERMIT UNLESS THE CITY MAKES FINDINGS THAT ARE MISSING FROM THE PLANNING DIRECTOR'S PROPOSED FINDINGS.**

***"§ 15332. In-Fill Development Projects.***

*Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.(c) The project site has no value, as habitat for endangered, rare or threatened species.(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.(e) The site can be adequately served by all required utilities and public services."*

(Bolding added.)

As the full text of the Categorical Exemption relied on by Eco-Box and the City (quoted above) clearly shows, simply being located on a site of five acres or less is not enough to qualify for the exemption. A determination that the project would not have certain types of significant effects on the environment is also required. The findings proposed by the Director do not include even one of these 4 required findings.

## III.

**THE CITY'S PROCESSING OF THIS RECYCLING FACILITYPERMIT UNDER AN INELIGIBLE CATEGORICAL EXEMPTION WHEN IT HAS REQUIRED INITIAL STUDIES FOR THE RECYCLING FACILITYPERMITS OF COMPETITORS IS AN A DENIAL OF EQUAL PROTECTION OF LAW IN VIOLATION OF THE 14H AMENDMENT TO THE U.S. CONSTITUTION.**

Joseph Horwedel, Director  
February 26, 2013  
Page 4 of 4

The claim requires no elaboration. Its merit is self-evident, and creates liability for the City under the Federal Civil Rights Act, 28 USC Section 1983. See the Frank Weigel letter of November 26, 2012 for the list of sites and operators for whom the City required full CEQA processing.

Respectfully submitted,



BRUCE TICHININ

Ready